TEXAS DEPARTMENT OF CRIMINAL JUSTICE

PD-76 (rev. 4), "Employment and Reemployment of Members of the Uniformed Services" October 1, 2012

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TEXAS DEPARTMENT NUMBER: PD-76 (rev. 4)

OF DATE: October 1, 2012

CRIMINAL JUSTICE PAGE: 1 of 14

SUPERSEDES: PD-76 (rev. 3)

December 1, 2010

EXECUTIVE DIRECTIVE

SUBJECT: EMPLOYMENT AND REEMPLOYMENT OF MEMBERS OF THE

UNIFORMED SERVICES

AUTHORITY: 10 U.S.C. §12503; Uniformed Services Employment and Reemployment

Rights Act (USERRA), 38 U.S.C. §§4301-4334; 32 U.S.C. §115; Public Health Security and Bioterrorism Preparedness and Response Act of 2002, 42 U.S.C. §300hh -11(e)(3); Texas Government Code §§431.001-.138,

613.001-.023, 661.903-.9041

APPLICABILITY: Texas Department of Criminal Justice (TDCJ)

EMPLOYMENT AT WILL CLAUSE:

These guidelines **do not** constitute an employment contract or a guarantee of continued employment. The TDCJ reserves the right to change the provisions of these guidelines at any time.

Nothing in these guidelines and procedures limits the executive director's authority to establish or revise human resources policy. These guidelines and procedures are adopted to guide the internal operations of the TDCJ and **do not** create any legally enforceable interest or limit the executive director's, deputy executive director's, or division directors' authority to terminate an employee at will.

POLICY:

The TDCJ shall comply with the provisions of applicable federal and state laws relating to employment and reemployment entitlements for prospective, current, or former members of the uniformed services. No employee shall be subjected to harassment or retaliation for opposing or reporting an alleged violation of a federal or state law relating to such entitlements.

DEFINITIONS:

"Armed Forces" means the U.S. Army, Navy, Marine Corps, Air Force, and Coast Guard, including an auxiliary service of those branches.

"Leaves Program Area" is a program area within the Employee Services Section, Human Resources Division, which is responsible for ensuring TDCJ's leave programs are in accordance with applicable federal and state laws.

"Military Service" or "Service in the Uniformed Services" is the performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority. Includes active duty; active duty for training; initial active duty for training; inactive duty training; full-time National Guard duty; a period for which a person is absent from a position of employment for the purpose of an examination to determine the fitness of the person to perform any such duty; a period for which a person is absent from a position of employment for the purpose of performing funeral honors duty as authorized by Title 10 U.S.C. section 12503 or Title 32 U.S.C. section 115; and service as an intermittent disaster response appointee upon activation of the National Disaster Medical System or participation by such an appointee in an authorized training program, even if the appointee is not a member of the uniformed services.

"State Military Forces" means the Texas National Guard, which includes the Texas Air National Guard and the Texas Army National Guard, the Texas State Guard, and any other active militia or military force organized under state law.

"Uniformed Services" means the U.S. Armed Forces, the Army National Guard, the Air National Guard, the Texas National Guard, the Texas State Guard, the commissioned corps of the Public Health Service, and any other category of persons designated by the president in time of war or emergency.

"Uniformed Services Employment and Reemployment Rights Act" (USERRA) protects service members' reemployment rights when returning from a period of service in the uniformed services, including those called up from the reserves or National Guard, and prohibits employer discrimination based on military service or obligation.

"Veterans Employment Preference," for the purposes of this directive, is preferential consideration for employment given, when all factors taken into consideration for selection of a final applicant are equal, to a veteran who served at least 90 consecutive calendar days of active duty in any branch of the U.S. Armed Forces or in an auxiliary service or reserve component of one of the branches. A veteran also includes those members discharged for an established service-connected disability, regardless of length of service. Further, to be defined as a veteran, the applicant shall have been honorably discharged. Provided the veteran meets the above criteria, employment preference is extended to a veteran's surviving spouse who has not remarried or an orphan of a veteran killed while on active duty, whether the death was service-connected or not.

"Workdays," for the purpose of this directive, are days that an employee is regularly scheduled to work, excluding state and national holidays for which TDCJ administrative offices are closed and days when offices are closed at the direction of the executive director, such as for adverse weather.

DISCUSSION:

An employee who fails to comply with the procedures within this directive, unless it is not practicable under the particular circumstances to do so despite the employee's diligent, good faith efforts, may be subject to disciplinary action in accordance with PD-22, "General Rules of Conduct and Disciplinary Action Guidelines for Employees" or administrative separation in accordance with PD-24, "Administrative Separation."

PROCEDURES:

I. General Provisions

- A. The military leave procedures in Section II do not apply to employees who enlist for full-time duty in the U.S. Armed Forces. Such employees shall not be placed on administrative leave for military service or leave without pay military (LWOP-Military).
- B. The procedures in Sections III, IV, and V relating to separation from employment and reemployment are applicable to employees who separate to perform service in the uniformed services.

II. Leave for Military Service

A. Military Training or Active Duty

An employee who is a member of the state military forces, National Guard, or a member of reserve components of the U.S. Armed Forces shall be granted administrative leave for up to 15 workdays per federal fiscal year, which is October 1 through September 30, for the purpose of engaging in authorized military training or active duty. An eligible employee shall be entitled to 15 workdays of such administrative leave at the beginning of each federal fiscal year, October 1, regardless of the employee's status at the end of the previous federal fiscal year. For example: If an employee was on LWOP-Military or was already on administrative leave - military on September 30, the employee would be entitled to another 15 workdays of administrative leave - military training on October 1. Any unused portion of the 15 workdays of administrative leave can carry forward into the next federal fiscal year up to a maximum of 45 workdays.

After an employee has exhausted the 15 workdays of administrative leave entitlement within a federal fiscal year for authorized military training or active duty, the employee shall be placed on leave in accordance with the following guidelines.

- 1. If the employee has accrued leave balances, the employee shall elect one of the following:
 - a. Use all accrued leave, other than sick leave, and then be placed in an LWOP-Military status;

- b. Freeze all accrued leave and immediately be placed in an LWOP-Military status; or
- c. Identify a specific number of accrued leave hours for use, other than sick leave, freeze the remaining balances of accrued leave hours, and be placed in an LWOP-Military status upon exhaustion of the leave hours identified for use. Compensatory and holiday leave shall be used prior to overtime and vacation leave.
- 2. If the employee freezes all or part of the employee's accrued compensatory and holiday leave before being placed in an LWOP-Military status, the employee shall be allowed to use the balance of such leave before it expires. Frozen vacation leave and overtime shall not be used until after the employee returns to work from an LWOP-Military status.
- 3. If the employee does not have any accrued leave balances, the employee shall immediately be placed in an LWOP-Military status.
- 4. An employee may remain in an LWOP-Military status for the entire period of service in the uniformed services.
- 5. If an employee is in a leave status, such as using accrued leave or LWOP Military, on September 30 as a result of authorized military training or active duty, the Leaves Program Area shall mail the employee a notification advising of the employee's entitlement to be placed back on administrative leave beginning October 1, which is the beginning of federal fiscal year, for a period up to 15 workdays.
 - a. The employee may elect when to use the administrative leave within the current federal fiscal year.
 - b. If the employee is still engaging in military training or active duty after exhausting the 15 workdays of administrative leave, the employee shall be returned to the appropriate leave status.

B. State Emergency Duty - National Guard

An employee called to state active duty as a member of the state military forces by the governor in an emergency shall be granted administrative leave for the tenure of the emergency without loss of military or annual leave.

The administrative leave granted for state emergency duty shall not count against the 15 workdays of administrative leave allowed per federal fiscal year for authorized military training or active duty.

C. National Emergency Duty under Title 10 or 32 U.S.C.

1. Leave Status

If an employee is called to active duty during a national emergency to serve in a reserve component of the U.S. Armed Forces under Title 10 or 32 U.S.C., the employee shall be placed in a leave status in accordance with the guidelines in Section II.A.

2. Differential Pay Leave

If an employee is in LWOP-Military status and the employee's monthly military gross pay, as defined by state statute, is less than the employee's monthly state gross pay, which is monthly state base pay + monthly longevity pay + monthly hazardous duty pay + unit pay differential + monthly benefit replacement pay + monthly Schedule C salary stipend, the employee shall receive sufficient administrative leave as differential pay. The combination of such leave and military pay may not exceed the employee's actual state gross pay.

3. One Hour Leave for State Service Credit

If the employee is in LWOP-Military status and is not receiving any other paid leave entitlement, the employee shall be granted one hour of paid administrative leave during each month of active military service for the purpose of receiving service credit in the Employees Retirement System of Texas (ERS).

4. Federal Declared Emergency Active Duty

If an employee is called to federal active duty for the purpose of providing assistance to civil authorities in a declared emergency or for training for that purpose, the employee is entitled to receive paid emergency leave for no more than 22 workdays per calendar year without loss of military leave or annual leave. Any unused balance of the 22 workdays shall not be carried forward into the next calendar year.

Such administrative leave for an employee called to federal declared emergency active duty shall not be counted against the 15 workdays allowed per federal fiscal year for authorized military training or active duty for an employee who is also a member of the National Guard.

The chart below is provided as a quick reference for the amount of administrative leave allowed for the different types of military leave.

Military Leave	Administrative Leave		
Training/Active Duty	15 workdays per federal fiscal year		
State Emergency Duty – National Guard	Paid leave for the tenure Does not count against the 15 workdays per federal fiscal year		
National Emergency Duty	15 workdays per federal fiscal year plus one hour each month		
Federal Declared Emergency	22 workdays per calendar year Does not count against the 15 workdays per federal fiscal year		

D. Leave Request

- 1. When an employee is provided advance notice of required military duty, the employee shall complete a PERS 24, Leave Request for the entire period of requested leave and submit the PERS 24 along with the employee's military orders to the employee's supervisor in advance of the requested leave. The employee's supervisor shall submit the PERS 24 and the military orders to the warden or department head for signature.
- 2. In the event of an emergency call to duty, or if an employee who is engaging in military training is on administrative leave or LWOP-Military status and the training or call to duty extends from one federal fiscal year to another federal fiscal year, the employee shall:
 - (a) Contact the warden or department head or highest ranking supervisor on duty for verbal approval; and
 - (b) Submit a completed PERS 24, Leave Request and the employee's military orders within six months of receiving such verbal approval.

If the initial military orders expire, the employee shall complete a new PERS 24, Leave Request and submit it along with new military orders within six months of expiration of the initial orders.

E. Return to Work

Upon completion of service in the uniformed services, an employee shall notify the human resources representative of the intent to report to the employee's previous unit or department of assignment within the following appropriate timeframe. If the employee cannot report to work within the appropriate timeframe due to reasons beyond the employee's control, other than the reason stated in Section II.E.4, the Leaves Program Area may make an exception.

1. Less than 31 Calendar Days of Service

The employee is not required to report to work until the employee has a period of eight hours to rest following safe transportation to the employee's residence. The employee shall report to work no later than the beginning of the employee's first full regularly scheduled work period on the first full calendar day following the end of the eight-hour period of rest. If the eight-hour period ended on Monday, Tuesday would be considered the first full calendar day.

2. 31 - 180 Calendar Days of Service

The employee shall report to work no later than 14 calendar days after the completion of service.

3. 181+ Calendar Days of Service

The employee shall report to work no later than 90 calendar days after the completion of service.

4. Deadline Extensions

The deadlines are extended for up to two years for returning service members who are hospitalized or recovering from an illness or injury incurred or aggravated by military service.

5. Position Placement Entitlement

The position placement entitlement for an employee returning from service in the uniformed services shall be in accordance with Section IV.D.2 of this directive. The entitlement is the same regardless of whether the employee is returning from a leave status or after a separation in employment that was due to service in the uniformed services.

F. Benefit Entitlements

- 1. An employee shall earn monthly vacation and sick leave for each calendar month of Military Emergency Leave (ME) or Military Leave (ML). The accrued vacation and sick leave shall be credited to the employee's leave balances when the employee returns to active state employment.
- 2. An employee in ME or ML status shall be credited with the months of state service for the period of time the employee was in such a status.
- 3. When an employee who was in ME or ML status applies for another position within the TDCJ, participants in the selection process shall count the period

of such status as state service that was accrued while in the employee's preservice position. This provision is applicable:

- a. When considering job-related experience for the purpose of conducting minimum qualifications screening, document screening, or selecting a final applicant; and
- b. Regardless of the type of uniformed service performed.

G. Separation from Employment - Expiration of LWOP-Military

- 1. If the employee does not return to work within the time approved for LWOP-Military status, the human resources representative shall notify the Leaves Program Area. An employee who has been on LWOP-Military status shall not be separated from employment prior to the Leaves Program Area reviewing the circumstances.
- 2. Upon the Leaves Program Area concurring that separation is an appropriate action, the human resources representative shall enter a payroll status change (PSC) indicating "Expiration of LWOP-Military."
- 3. After the PSC has been approved by the warden or department head, the human resources representative shall forward a copy of the PSC Update (PSCUPD) screen of the Payroll/Personnel System (PPS) screen print to the employee accompanied by a PERS 302, Expiration of Leave Without Pay Notification (Attachment A), advising the employee of re-employment procedures and possible health coverage continuation rights through provisions set by COBRA.

III. Notice of Separation from Employment

If separation from employment is necessitated by the employee's service in the uniformed services, the employee shall provide verbal or written notification to the employee's supervisor that the employee intends to separate employment for this reason. The employee shall provide such notification as far in advance as is reasonable under the circumstances. Such notification shall assist the TDCJ in identifying that the employee may be eligible for reemployment under the provisions of this directive.

When entering the PSC in the PSCUPD screen in the PPS, the human resources representative shall indicate "Separated to Perform Service in the Uniformed Services" in the description (DESC) field.

IV. Reemployment

A. General Provisions

An eligible former employee who separated from employment with the TDCJ to perform service in the uniformed services is entitled to be reemployed by the TDCJ in accordance with the provisions within this directive. However, nothing in this directive shall be construed as requiring the TDCJ to reemploy a person if the TDCJ circumstances have so changed as to make such reemployment impossible or unreasonable or such reemployment would impose an undue hardship on the TDCJ.

B. Eligibility for Reemployment

1. To be eligible for reemployment, the most recent PSC in the PSCUPD screen in the PPS should indicate "Separated to Perform Service in the Uniformed Services" in the DESC field.

2. Honorable Discharge Conditions

To be eligible for reemployment, a former employee shall have been honorably discharged, with the status of either Honorable, General, or Under Honorable Conditions, or released from military service under honorable conditions. Uncharacterized entry level discharges are considered honorable for the purpose of reemployment.

3. Length of Service

In general, the period of separation from employment with the TDCJ to perform service in the uniformed services shall not exceed a cumulative period of five years. The five-year period includes only the time the former employee actually spent performing services in the uniformed services. A period of absence from employment before or after the performance of service in the uniformed services does not count against the five-year limit, for example, time spent preparing for departure, time allowed between discharge, and application for reemployment. The TDCJ shall allow the exceptions to this five-year limit specified within the *Uniformed Services Employment and Reemployment Rights Act* (USERRA).

C. Former Employee Responsibilities

1. Timely Application

Upon completion of a period of service in the uniformed services, the former employee shall submit an application for reemployment to the Employment Section, Human Resources Division, no later than the 90th day after the completion of service. Exceptions for applying for reemployment within the appropriate time frame may be granted for factors beyond the former

employee's control as specified within the USERRA, for example, hospitalization for or convalescence from an illness or injury incurred in or aggravated during the performance of service in the uniformed services.

If a former employee fails to timely report for or apply for reemployment for a reason other than a factor beyond the former employee's control as specified within the USERRA, the former employee does not automatically forfeit entitlement to reemployment and other rights and benefits. In such cases, the human resources director shall be contacted to ensure compliance with reemployment entitlements.

2. Identification of Entitlement to USERRA Protection

Upon reporting or applying for reemployment, the former employee should ensure that the Employment Section is aware that the reason for separation from employment was to perform service in the uniformed services. The former employee should:

- a. Clearly mark at the top of the State of Texas Application for Employment form "Reemployment Member of Uniformed Services";
- b. Clearly indicate in the Employment History Section of the form that separation to perform service in the uniformed services was the reason for separation from TDCJ employment; and
- c. Check "Veteran's Reinstatement" on the top of the TDCJ Employment Application Supplement.

3. Documentation

Upon application for reemployment, a former employee should provide the Member 4 copy of the DD 214, Certificate of Release or Discharge from Active Duty, other copy of the DD 214, or other evidence of release from military service under honorable conditions. However, the former employee shall be reemployed even if such documentation does not exist or is not readily available at the time of application for reemployment. If documentation becomes available that establishes the employee did not meet the eligibility requirements for reemployment, the employee may be separated from employment with the TDCJ.

4. Acceptance or Rejection of Offered Position

A former employee may accept or reject an offered position. Acceptance or rejection of a position similar to the position held at the time of separation shall satisfy requirements relating to reemployment entitlements of members of the uniformed services. If the former employee rejects an offered position,

the former employee may apply and be considered for other positions within the TDCJ and shall receive veteran's employment preference.

D. Responsibilities of the TDCJ

1. General Provisions

If a human resources representative is advised by a former employee who separated employment to perform service in the uniformed services that the former employee is electing to return to employment, the human resources representative shall contact the Employment Section, Human Resources Division. The Employment Section shall perform the clearance for the former employee to return to work. An eligible former employee shall be reemployed as soon as practicable.

2. Placement Entitlements When Requesting to Return to Pre-Service Position

Except as provided in paragraphs a and b, an eligible employee shall be reinstated in the position the employee would have attained with reasonable certainty if the continuous employment of the employee had not been interrupted by service in the uniformed services. This position is known as the employee's escalator position. Therefore, if the employee's previous position was in an established career ladder, the months of service in the uniformed services shall count as months of active satisfactory service accrued towards a career ladder adjustment. If the employee's pre-service position was not in an established career ladder, the employee shall be reinstated in the employee's pre-service position. In addition, the employee shall have seniority status restored, for example, the employee's position on a transfer list or shift change list.

- a. If the employee makes known the need for an accommodation because of a permanent medical condition incurred in or aggravated during such service, the human resources representative shall contact the Americans with Disabilities Act coordinator. Requests for a workplace accommodation shall be processed in accordance with the procedures in PD-14, "Americans with Disabilities Act and Employment of Persons with a Permanent Medical Condition." The employee is required to be qualified to perform the duties of a position in which the employee is entitled to be placed. The TDCJ shall make reasonable efforts to help the former employee become qualified to perform the duties of such a position.
 - (1) If the employee was in a career ladder position, the employee shall be entitled to be reinstated in the employee's escalator position or nearest approximation in terms of seniority, status, and pay of the employee's escalator position.

- (2) If the employee was not in a career ladder position or is not qualified for a position described in subsection (1), the employee is entitled to be reinstated in the employee's preservice position or a position of nearest approximation in terms of seniority, status, and pay.
- (3) If, after reasonable efforts by the TDCJ, the employee is not qualified to perform the duties of the employee's escalator or pre-service position, or a like position, the employee shall be employed in any other position that is the nearest approximation first to the escalator position, if applicable, then to the pre-service position.
- b. If the employee's escalator or pre-service position no longer exists or has been restructured to require skills the employee does not have, the employee shall be entitled to be reinstated in another position for which the employee is qualified and which is the nearest approximation in terms of pay, benefits, seniority, status, and other job perquisites of the escalator or pre-service position. The human resources director shall make a determination regarding job assignment, location of assignment, and the applicable salary group and rate for the employee.

3. TDCJ Service Entitlement When Competing for Another Position

Upon an eligible employee's application for another position, participants in the selection process shall count the period the employee was separated from employment in order to perform service in the uniformed services as state service that was accrued while in the employee's pre-service position. This provision:

- a. Relates to an initial application for reemployment or an application submitted after reemployment, for example, applying for promotion to a posted vacancy;
- b. Is applicable when considering job-related experience for the purpose of conducting minimum qualifications screening, conducting document screening, or selecting a final applicant; and
- c. Is applicable regardless of the type of uniformed service performed.

4. Benefit Entitlements

An employee who has been reemployed under this directive shall be entitled to:

- a. Crediting of sick leave accrued prior to service in the uniformed services;
- b. Crediting of months of service in the uniformed services;
- c. Immediate reinstatement of membership in the ERS of Texas; and
- d. Immediate reinstatement of health insurance benefits.

V. Protection Against Separation Without Cause

If an employee has returned from leave or been reemployed under the provisions of this directive, the TDCJ may not separate the employee from employment without cause, for example, reduction-in-force, before the first anniversary of the date of the employee's return or reemployment.

Brad Livingston
Executive Director

Texas Department of Criminal Justice Expiration of Leave without Pay Notification

Employee Name				Date				
Last	First		MI	mm/dd/yyyy				
Employee Social S	Security Number:							
	Employee Mailing Address							
Street or P.O. Box		City	State	Zip Code				
Employment Section, Human Resources Division. If you are eligible for continuation of your health insurance coverage through the provisions set forth by the <i>Consolidated Omnibus Budget Reconciliation Act</i> (COBRA), the Employees Retirement System of Texas (ERS) will mail information relating to this option to your home address. If you have any questions regarding your COBRA continuation rights, you should contact the ERS of Texas at 1-877-275-4377. HUMAN RESOURCES REPRESENTATIVE:								
Name (Printed)		<u> </u>	Signature					
() Phone Number		_	Date (mm/dd/yy	vv)				
			zace (mm ad/yy	JJ/				
Attachment(s)								
Distribution:								

Copy - Employee Unit or Department Human Resources File, Payroll Section

Original - Employee